

STATE OF SOUTH DAKOTA     )  
  : SS  
COUNTY OF MINNEHAHA     )

IN CIRCUIT COURT  
  
SECOND JUDICIAL CIRCUIT

COMMUNICATION SERVICE FOR THE  
DEAF, INC.,

Plaintiff,

- vs -

FIRST ADMINISTRATORS, INC.,

Defendant.

CIV.

**SUMMONS**

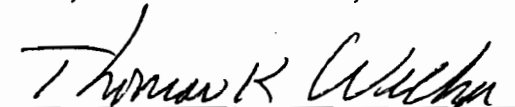
THE STATE OF SOUTH DAKOTA TO THE ABOVE-NAMED DEFENDANT:

You are hereby summoned and required to serve upon Hagen, Wilka & Archer, LLP, attorneys for the Plaintiffs, whose address is 600 South Main Avenue, Suite 102, PO Box 964, Sioux Falls, South Dakota 57101-0964, an Answer to the Complaint which is herewith served upon you within thirty (30) days after service of this Summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint.

Dated this 17th day of August, 2010, at Sioux Falls, South Dakota.

HAGEN, WILKA & ARCHER, LLP

By



Thomas K. Wilka  
600 S. Main Avenue, Suite 102  
P.O. Box 964  
Sioux Falls, SD 57101-0964  
(605)334-0005  
Attorneys for Plaintiff

**EXHIBIT A**

STATE OF SOUTH DAKOTA     )  
  : SS  
COUNTY OF MINNEHAHA     )

IN CIRCUIT COURT  
  
SECOND JUDICIAL CIRCUIT

COMMUNICATION SERVICE FOR THE  
DEAF, INC.,

Plaintiff,

- vs -

FIRST ADMINISTRATORS, INC.,

Defendant.

CIV.

**COMPLAINT**

For its Complaint against the Defendant, the Plaintiff states as follows:

1. Plaintiff Communication Service for the Deaf, Inc. ("CSD") is a non-profit corporation organized under the laws of South Dakota with its principle place of business at 102 North Krohn, Sioux Falls, SD.

2. Defendant First Administrators, Inc. is an Iowa corporation with its principle place of business at 636 Grand Avenue, Station 32, Des Moines, IA, 50309. Its registered agent in South Dakota is CT Corporation, 319 S. Coteau Street, Pierre, South Dakota, 57501.

3. From 2004 to 2008, CSD established an employee welfare benefit plan, a self-funded health insurance plan, for its employees.

4. Defendant entered into an April 1, 2004, Benefit Services Administration Agreement for the Communication Service for the Deaf, Inc. Healthcare Plan, a copy of which is attached to this Complaint as Exhibit A and incorporated herein as though set out in full. By this Agreement, Defendant agreed to act as the Benefit Services Administrator for Plaintiff's employee benefit plan.

5. Pursuant to the Agreement, Exhibit A, Defendant specifically undertook the duties described at pages 4-7 of the Agreement, Exhibit A.

6. Defendant negotiated and completed an application with RMTS LLC for stop loss insurance coverage for Plaintiff's employees and agreed on Plaintiff's behalf to enter into an insurance contract providing a policy of excess loss insurance with Gerber Life Insurance Company of White Plains, NY. Defendant was aware of the cancelation provisions and requirements for submitting claims to Gerber and acted as Plaintiff's agent for that purpose.

FIRST CAUSE OF ACTION:  
BREACH OF CONTRACT

7. Paragraphs 1 to 6 are incorporated by this reference as though set out in full.

8. Defendant failed to properly place adequate stop loss insurance coverage for Plaintiff, failed to properly complete Standard Stop Loss Disclosure Forms and process claims with the stop loss insurance carrier, failed to meet deadlines for the submission of claims and failed to keep Plaintiff properly informed about cancelation provisions and the status of claims, all of which constituted a breach by Defendant of its Agreement with Plaintiff.

9. As a direct and proximate result of this breach of contract by Defendant, Plaintiff was damaged by claims not being covered by insurance in the following amounts:

Rowland	\$140,551.00
St. Joseph's Hospital and Health Center Syracuse, NY	\$272,668.00
Fairview Hospital Fairview MN	\$156,122.36

SECOND CAUSE OF ACTION:  
NEGLIGENCE

10. Paragraphs 1 to 9 are incorporated by this reference as though set out in full.

11. By entering into the Agreement with Plaintiff, and by agreeing to act as Plaintiff's insurance agent, Defendant undertook a duty owed to Plaintiff to conduct itself consistent with the standards in the insurance agency and claim administration industries and professions, to protect the Plaintiff from injury, and to provide insurance of the kind and with the provisions specified by the Plaintiff.

12. Defendant breached this duty and was therefore negligent, because Defendant:

- a. Failed to provide Plaintiff with adequate stop loss insurance coverage;
- b. Failed to properly complete standard stop loss disclosures forms and process claims with the insurance policy which was provided;
- c. Failed to properly inform Plaintiff of contract cancelation provisions and the status of claims;
- d. Failed to meet mandatory deadlines for the processing of claims; and
- e. Failed to notify stop loss carrier of plan changes.

13. As a direct and proximate result of Defendant's negligence, Plaintiff was damaged by claims not being covered by insurance in the following amounts:

Rowland	\$140,551.00
St. Joseph's Hospital and Health Center Syracuse, NY	\$272,668.00
Fairview Hospital Fairview MN	\$156,122.36

THIRD CAUSE OF ACTION:  
BREACH OF FIDUCIARY DUTY

14. Paragraphs 1 to 13 are incorporated by this reference as though set out in full.

15. Defendant owed a fiduciary duty to Plaintiff because Plaintiff reposed its confidence and trust in Defendant to act as its insurance agent, and between Plaintiff and Defendant there existed an inequality of knowledge in favor of Defendant, a dependence by Plaintiff on Defendant arising from the greater business intelligence by Defendant regarding insurance, and Defendant's superior knowledge of the facts and other conditions, all of which gave rise to a fiduciary duty owed by Defendant to Plaintiff.

16. As a direct and proximate result of Defendant's breach of fiduciary duty, Plaintiff was damaged by claims not being covered by insurance in the following amounts:

Rowland	\$140,551.00
St. Joseph's Hospital and Health Center Syracuse, NY	\$272,668.00
Fairview Hospital Fairview, MN	\$156,122.36

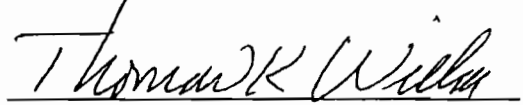
17. Plaintiff is entitled to prejudgment interest at the rate of 10% per annum from November 1, 2007, until the date of judgment.

WHEREFORE, Plaintiff prays for a judgment in favor of Plaintiff and against Defendant in an amount not less than \$569,341.36, for compensatory damages, for an award of prejudgment interest on those compensatory damages, for Plaintiff's attorneys and costs, and for whatever additional relief the Court deems just and equitable.

Dated this 17<sup>th</sup> day of August, 2010, at Sioux Falls, South Dakota.

HAGEN, WILKA & ARCHER, LLP

By

A handwritten signature in cursive script, appearing to read "Thomas K. Wilka", written over a horizontal line.

Thomas K. Wilka  
600 S. Main Avenue, Suite 102  
P.O. Box 964  
Sioux Falls, SD 57101-0964  
(605)334-0005  
Attorneys for Plaintiff



**Service of Process  
Transmittal**

08/19/2010

CT Log Number 517138353



**RECEIVED**

AUG 20 2010

**LEGAL DEPARTMENT**

**TO:** Michele Druker, Vice President & Assoc. General Counsel  
Wellmark Blue Cross and Blue Shield of Iowa  
636 Grand Avenue, Station 32  
Des Moines, IA 50309-2565

**RE: Process Served in South Dakota**

**FOR:** First Administrators, Inc. (Domestic State: IA)

**ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:**

**TITLE OF ACTION:** Communication Service for the Deaf, Inc., Pltf. vs. First Administrators, Inc., Dft.

**DOCUMENT(S) SERVED:** Summons, Complaint (Refers to Exhibit A attached, however, there were no exhibit attached.)

**COURT/AGENCY:** Circuit Court, Minnehaha County, SD  
Case # None Specified

**NATURE OF ACTION:** Insurance Litigation - Breach of contract, breach of fiduciary duty, and negligence

**ON WHOM PROCESS WAS SERVED:** C T Corporation System, Pierre, SD

**DATE AND HOUR OF SERVICE:** By Process Server on 08/19/2010 at 09:50

**APPEARANCE OR ANSWER DUE:** Within 30 days exclusive of the day of service

**ATTORNEY(S) / SENDER(S):** Thomas K. Wilka  
Hagen, Wilka & Archer, LLP  
600 S. Main Avenue, Suite 102  
P.O. box 964  
Sioux Falls, SD 57101-0964  
605-334-0005

**ACTION ITEMS:** SOP Papers with Transmittal, via Fed Ex 2 Day , 792204298635  
Email Notification, Michele Druker MDRUKER@WELLMARK.COM  
Email Notification, George Hanna hannag@wellmark.com  
Email Notification, Kelli Brockmann brockmannk@wellmark.com  
Email Notification, Dee Pardock pardockd@wellmark.com

**SIGNED:** C T Corporation System  
**PER:** Amy McLaren  
**ADDRESS:** 319 S. Coteau Street  
Pierre, SD 57501  
**TELEPHONE:** 800-592-9023

## FedEx Packing Slip

**Package # :** 5703381149  
**Created By :** Deborah Raymond  
**Created On :** 08/19/2010 01:37 PM  
**FedEx Tracking # :** --

**Recipient :**

<b>Michele Druker</b>
Title : Vice President & Assoc. General Counsel Customer : Wellmark Blue Cross and Blue Shield of Iowa Address : 636 Grand Avenue, Station 32, Des Moines, IA - 50309-2565 Email : MDRUKER@WELLMARK.COM Phone : 515-245-4718 Fax : -

**FedEx Account :** 120412248  
**Shipment Type :** FedEx 2Day  
**PackageType :** Envelope  
**Items Shipped :** 1

Log #	Case #	Entity Name	Assigned To
517138353	--	First Administrators, Inc.	Deborah Raymond